

CITY AND COUNTY OF SAN FRANCISCO



George Gascón  
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

CRISTINE SOTO DE BERRY  
Chief of Staff  
DIRECT DIAL: (415) 553-1747  
E-MAIL: CRISTINE.DEBERRY@SFGOV.ORG

October 17, 2016

VIA ELECTRONIC MAIL

Erich Snow  
foia.pra.research@gmail.com

Re: Public Record Request Received via email on 10/5/2016

Dear Mr. Snow,

This letter is in response to your Public Record Request received by our office on 10/5/2016, making the following request:

1. *The complete list of cameras, including all information entered into the website "<http://sfdistrictattorney.org/register-your-camera>." This includes:*
  - a. *registration type, responsible party/contact for camera, camera location, camera information, and camera view;*
  - b. *when and how often each camera and camera owner was contacted by law enforcement, even if the case did not use the footage, or the case was dismissed, or the case was resolved through alternative sentencing;*
  - c. *whether the camera is still registered;*
  - d. *whether and which cameras have been used in multiple investigations;*
2. *The SFDA's current or planned uses of the program, including policies, procedures, guides, manuals, instructions, and any other records or documentation concerning:*
  - a. *capabilities, performance, and limitations of the program, including information on any contexts in which the cameras have been or may be used;*
  - b. *contexts, processes, or protocols for collecting camera footage to be used as evidence in a trial;*
  - c. *issues or potential problems related to the use of the cameras;*
  - d. *database(s) in which the footage is stored once the SFDA obtains it, and any other local, state, or federal databases with whom the SFDA shares that footage, as a matter of policy or otherwise;*

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- e. *who may access the footage or databases, under what circumstances, and any procedures or policies they are required to follow;*
- 3. *If such a database exists, a record of who accessed what parts of it, and how those records were used;*
- 4. *Any pilot program or early versions of the program, including correspondence, memoranda, electronic communications, and training materials, and including both internal communications and communications between the SFDA and the San Francisco County Sheriff's Office, or San Francisco Police Department, or any database manufacturer, developer, vendor, or service provider;*
- 5. *Analyses conducted by the SFDA concerning the efficacy of the program, including the results of those analyses;*
- 6. *Policies, guidelines, training materials, and/or instructions on the use of the cameras and/or camera databases—whether created by the SFDA or a third party manufacturer or developer—and the legal process, if any, required prior to accessing the database(s) in investigations with San Francisco County Law Enforcement offices or in court with Assistant District Attorneys;*
- 7. *The SFDA's training programs related to the use of the program and footage, including but not limited to any and all communications regarding the development of the training programs, copies of any training materials, training program syllabuses, and procedures for dealing with Brady<sup>1</sup> and Pitchess<sup>2</sup> material; and*
- 8. *Any and all communications with other agencies about the program, including but not limited to:*
  - a. *communication with the FBI, the U.S. Department of Justice, the Department of Homeland Security and all subsidiary agencies, and the California Department of Justice;*
  - b. *communication with other state and/or local law enforcement agencies, governments, or correctional facilities concerning the Police Department's or Sheriff's Office's current or planned collection, analysis, storage, and sharing of footage from the cameras, including communications through and to the Northern California Regional Intelligence Center and the Northern California High Intensity Drug Trafficking Area (commonly known as HIDTA); and*
  - c. *communications with Senator Dianne Feinstein, Senator Barbara Boxer, Congressperson Nancy Pelosi of California's 12th District, Congressperson Jackie Speier of California's 14th District, as well as communications with their respective offices regarding the program;*

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- d. *communications with Mayor Ed Lee, Assemblymember David Chiu of California's 17th District, Assemblymember Phil Ting of California's 19th District, Speaker Pro Tempore Kevin Mullin of California's 22nd District, and State Senator Mark Leno of California's 11th District, as well as communications with their respective offices regarding the program;*
- e. *memoranda of understanding (MOU) or similar records reflecting the sharing of Rapid DNA associated records with the FBI, the Department of Justice, the Department of Homeland Security, or the Drug Enforcement Agency, including any Rapid DNA associated records referencing FBI's Next Generation Identification (NGI), Interstate Photo System (IPS), Integrated Automated Fingerprint Information System (IAFIS).*

9. *Audit documents, including but not limited to audits of the system, misuse reports, and reports to oversight bodies.*

Please see the response to your request below:

Under the Public Records Act and the Sunshine Ordinance, a “public record” is broadly defined to include “any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency, regardless of the physical form or characteristics.” (Govt. Code §6252(e)) If the department has no records responsive to the specific request, the department has no duty to create or recreate one.

The investigatory records of a law enforcement agency are exempt from disclosure under the California Public Records Act. Cal. Govt. Code § 6254(f). As the Office of the District Attorney’s investigation of alleged criminal violations is a matter of statewide concern, caselaw specifically holds that the office’s investigatory records cannot be subject to compelled disclosure, whether the investigation is opened or closed, under the Sunshine Ordinance or any other local law. *Rivero v. Superior Court* (1997) 54 Cal. App. 4<sup>th</sup> 1048, 1059-1060.

Furthermore, records that contain the work product of an attorney representing the City are protected from disclosure. Cal. Govt. Code §§ 6254(k) 6276.04; Cal. Code Civ. Proc. §2018.30. The attorney work product doctrine functions as a privilege, protecting from disclosure “[a] writing that reflects an attorney’s impressions, conclusions, opinions or legal research or theories.” Cal. Code Civ. Proc. § 2018.030(a). The attorney work product privilege also extends beyond records prepared for litigation purposes. Similarly, communications made between a department and its attorneys are made in confidence under the attorney-client relationship. (Cal. Govt. Code §§ 6254(k), 6276.04; Cal. Evid. Cod §§ 950 et seq.

Similarly, preliminary drafts, notes, or interagency or intra-agency memoranda may be exempt from disclosure under Cal. Govt. Code § 6254(a). Additionally, “official information,” which is acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, is privileged against disclosure per Cal. Evid. Code 1040.

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As background information, none of the cameras documented in the San Francisco District Attorney's Security Interactive Map program were implemented by, or have any connection to, the San Francisco District Attorney's Office. Additionally, the scope of the program does not include requesting, collecting, storing, and/or disseminating video footage collected from cameras registered under the program into a database or databases. Rather, the program simply reflects the available cameras in a given area, from which footage can be individually requested for investigative purposes.

Below, please find an itemized response to your public record request:

1. Records responsive to 1a. of your request are protected from disclosure as official information per Cal. Evid. Code § 1040l; registrants provided their information under a confidentiality disclaimer. Additionally, the records you seek also fall within our investigative file and are exempt from disclosure under Cal. Govt. Code § 6254(f). The District Attorney's Office has a policy and practice of maintaining the confidentiality of its investigatory files, even after closing a case. Among other reasons, this policy is necessary to avoid disclosure of the Office's investigations, investigatory techniques, including staff assigned to cases, and to avoid the chilling effect a policy of such disclosure would have on cooperation from members of the public.

As for items 1b. and 1d., there are no records responsive to your request.

As for items 1c., there are currently approximately 1,286 registered cameras. Please note, however, that given the evolving nature of the program, this number is subject to change.

2. Records responsive to items 2a. and 2c. fall within our investigative file and are exempt from disclosure under Cal. Govt. Code § 6254(f). As stated above, the District Attorney's Office has a policy and practice of maintaining the confidentiality of its investigatory files, even after closing a case.

As for items 2b., 2d., and 2e., there are no records responsive to your request. The San Francisco District Attorney's Office does not request video footage as part of the program. The program is optional for willing participants to simply inform law enforcement that there are available cameras in a given location if a crime occurs and that video footage can be requested specifically from those locations if needed. Accordingly, the San Francisco District Attorney's Office does not retain, request, store or collect security footage within a database under the program.

3. For the reasons stated above (in items 2b., 2d., and 2e.), there are no records responsive to your request.

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4. Enclosed, please finds records responsive to this portion of your request. Please be advised that records of drafts, notes, and/or inter and intra-agency memoranda have been withheld per Cal. Gov. Code section 6254(a). Similarly, any information within our investigative file and records protected by attorney work product and/or the attorney client privilege have been redacted or withheld as necessary. Please also note that personal contact information within these records has been redacted per Cal. Govt. Code §6254(c); it sheds no light on the operation of City government.
5. There are no records responsive to this portion of your request; the San Francisco District Attorney's Office does not keep the requested data as it pertains to the program.
6. There are no records responsive to this portion of your request.
7. There are no records responsive to this portion of your request.
8. There are no records responsive to this portion of your request. As previously mentioned, the San Francisco District Attorney's Office does not retain, request, store or collect security footage within a database under the program, and accordingly, has not corresponded with other agencies about engaging in such processes.
9. Given the previously described scope of the program, there are no records responsive to this portion of your request.

If we locate any additional records relating to the present disclosure, our office will certainly make them available.

Sincerely,

ALEX BASTIAN  
Deputy Chief of Staff